

**REMARKS/ARGUMENTS:**

Claims 1-17, 22 and 24-26 are presently pending. Claim 25 has been amended solely to expedite prosecution without prejudice or disclaimer. Accordingly, claims 1-17, 22, and 24-26 will be pending upon entry of the instant amendments. *No new matter has been added.*

Moreover, amendment and/or cancellation of the claims during pendency of the application are not to be construed as acquiescence to any of the objections/rejections set forth in any Office Action, and were done solely to expedite prosecution of the application. Applicants submit that claims were not added or amended during prosecution of the instant application for reasons related to patentability. Applicants reserve the right to pursue the claims as originally filed, subsequently amended or added, or similar claims, in this or one or more subsequent applications.

**Double Patenting**

Claims 1-17, 22, 24 and 26 have been ***provisionally*** rejected on the ground of nonstatutory obviousness-type double patenting. The Examiner has suggested that claims 1-24 of co-pending application 10/599,328 (101091-1P US) is not patentably distinct “because the instant formula I is a position isomer of the formula I of the copending application 10/559328”. As highlighted in our prior response, however, this is a **provisional** obviousness-type double patenting rejection, which has not matured into an **actual** obviousness-type double patenting rejection. In this regard, Applicants again assert their right to hold comment on this rejection until such time as US Application No. 10/559,328 issues as a patent.

Moreover, in light of these arguments, and Applicant’s attorney’s brief discussion with the Examiner, Applicants respectfully request withdrawal of the provisional rejection of 1-17, 22, 24 and 26 on the ground of nonstatutory obviousness-type double patenting, and favorable reconsideration.

### **Claims Objections**

Claim 25 remains objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim must refer to preceding claims in the alternative language. As previously indicated, Applicants assert that claim 25 is actually an independent claim and not a multiple dependent claim.

Claim 25 relates to:

A process for the preparation of a compound according to claim 2 or a pharmaceutically acceptable salt thereof, which process comprises phosphorylation of a compound according to claim 1, followed by deprotection of the phosphate group to yield a compound according to claim 2.

***However, solely in order to expedite prosecution, Applicants have amended claim 25 to include the material from claims 1 and 2 within the recitation of claim 25.***

Applicants respectfully request withdrawal of the objection of claim 25 under 37 CFR 1.75(c), and favorable reconsideration.

### **Request for Phone Interview**

Once the Examiner has had an opportunity to review the comments made herein, Applicants respectfully request a phone interview in order to discuss any final details that may help result in an allowance of the application with all pending claims.

**CONCLUSION**

Applicants respectfully request favorable reconsideration and allowance of all pending claims. Passage of the instant application to issuance is earnestly solicited. As noted above, if a telephone conversation with Applicants' attorney would help to expedite the prosecution of the above-identified application, the Examiner is urged to call Applicants' attorney at the telephone number below.

Applicants do not believe any fees are presently due, however, the Commissioner is hereby authorized to charge any deficiency in the fees or credit any overpayment to deposit account No. 50-3231, referencing Attorney Docket No. 101015 – 1P US.

Respectfully submitted,  
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